

AMENDED IN ASSEMBLY MAY 31, 2016

AMENDED IN ASSEMBLY MAY 16, 2016

AMENDED IN ASSEMBLY MAY 2, 2016

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2818

Introduced by Assembly Member Chiu

February 19, 2016

An act to ~~add Sections 401.21 and 214.17 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy. amend Section 402.1 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2818, as amended, Chiu. Property taxation: community land trust.

Existing law requires the county assessor to consider, when valuing real property for property taxation purposes, the effect of any enforceable restrictions to which the use of the land may be subjected, including, but not limited to, zoning, recorded contracts with governmental agencies, and various other restrictions imposed by governments.

~~This bill, for lien dates occurring on and after January 1, 2017, in assessing an owner-occupied single-family dwelling or owner-occupied unit in a multifamily dwelling, and the land on which the dwelling or unit is situated required for the convenient occupation and use of that dwelling or unit by persons and families of low or moderate income,~~

would require the value of the dwelling or unit and the land to be presumed to be the purchase price of the dwelling or unit.

This bill, for lien dates occurring on and after January 1, 2017, in assessing a dwelling or unit owned by a limited equity housing cooperative or by a member-occupant or resident shareholder of the limited equity housing cooperative, and the land on which the dwelling or unit is situated required for the convenient occupation and use of the dwelling or unit by persons and families of low or moderate income, would also require the value of the dwelling or unit and the land to be presumed to be the purchase price of the share conveying an exclusive right to occupancy and possession of that dwelling or unit.

Existing property tax law, in accordance with the California Constitution, provides for a “welfare exemption” for property used exclusively for religious, hospital, scientific, or charitable purposes and that is owned or operated by certain types of nonprofit entities, if certain qualifying criteria are met.

This bill, on and after January 1, 2017, would provide that property is within the welfare exemption if that property is owned and operated by a nonprofit corporation, otherwise qualifying for the welfare exemption, that has as one of its primary purposes the creating and maintaining of permanently affordable single-family or multifamily residences to which specified conditions apply. The bill, in the case of property not previously designated as open space, would prohibit this exemption from being denied on the basis that the subject property does not currently include a single-family or multifamily residence as so described or a single-family or multifamily residence as so described that is in the course of construction. The bill would require the exemption to apply to a property for no more than 5 years from the date any of certain restrictions are recorded against the property.

This bill would require the county assessor to consider, when valuing real property for property taxation purposes, a recorded instrument that subjects a single-family dwelling or unit in a multifamily dwelling, and the land on which the dwelling or unit is situated that is required for the convenient occupation and use of that dwelling or unit by persons and families of low or moderate income, to affordability restrictions, including, among others, a purchase option for the dwelling or unit in favor of a community land trust, as defined, intended to preserve the dwelling or unit as affordable to persons and families of low or moderate income.

By ~~imposing new duties upon local government officials, changing the manner in which county assessors assess property for property taxation purposes,~~ this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Section 2229 of the Revenue and Taxation Code requires the Legislature to reimburse local agencies annually for certain property tax revenues lost as a result of any exemption or classification of property for purposes of ad valorem property taxation.

This bill would provide that, notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for property tax revenues lost by them pursuant to the bill.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 401.21 is added to the Revenue and~~
- 2 ~~Taxation Code, to read:~~
- 3 ~~401.21. (a) In assessing an owner-occupied single-family~~
- 4 ~~dwelling or owner-occupied unit in a multifamily dwelling, and~~
- 5 ~~the land on which the dwelling or unit is situated that is required~~
- 6 ~~for the convenient occupation and use of that dwelling or unit by~~
- 7 ~~persons and families of low or moderate income, the value of the~~
- 8 ~~dwelling or unit and the land shall be presumed to be the purchase~~
- 9 ~~price of the dwelling or unit.~~
- 10 ~~(b) In assessing a dwelling or unit owned by a limited equity~~
- 11 ~~housing cooperative or by a member-occupant or resident~~
- 12 ~~shareholder of the limited equity housing cooperative, and the land~~
- 13 ~~on which the dwelling or unit is situated that is required for the~~
- 14 ~~convenient occupation and use of the dwelling or unit by persons~~
- 15 ~~and families of low or moderate income, the value of the dwelling~~

1 or unit and the land shall be presumed to be the purchase price of
2 the share conveying an exclusive right to occupancy and possession
3 of that dwelling or unit.

4 (e) For purposes of this section, all of the following definitions
5 shall apply:

6 (1) “Affordability restrictions” include, but are not limited to,
7 any of the following:

8 (A) The dwelling or unit can only be rented, sold, or resold to
9 persons and families of low or moderate income to be occupied
10 as a principal place of residence.

11 (B) The sale or resale price of the dwelling or unit is determined
12 by a formula that ensures the dwelling or unit has a purchase price
13 that is affordable to persons and families of low or moderate
14 income.

15 (C) The rent collected from the dwelling or unit does not exceed
16 the maximum rent allowable to be collected from persons and
17 families of low or moderate income.

18 (D) There is a purchase option for the dwelling or unit in favor
19 of the community land trust intended to preserve the dwelling or
20 unit as affordable to persons and families of low or moderate
21 income.

22 (E) Any restriction that ensures the dwelling or unit is to remain
23 affordable to persons and families of low or moderate income by
24 recorded deed, deed restriction, ground lease, covenant,
25 memorandum, or other recorded instrument.

26 (F) Any restriction in a recorded instrument from which one of
27 the following public agencies or officials has made a finding that
28 the restriction serves the public interest to create and preserve the
29 affordability of residential housing for persons and families of low
30 or moderate income:

31 (i) The director of the local housing authority or equivalent
32 agency.

33 (ii) The county counsel.

34 (iii) The director of a county housing department.

35 (iv) The city attorney.

36 (v) The director of a city housing department.

37 (2) “Community land trust” means a nonprofit corporation,
38 otherwise qualifying for exemption under Section 214, that has as
39 one of its primary purposes the creation and maintenance of

1 permanently affordable single-family or multifamily residences
2 to which both of the following conditions apply:

3 (A) All residences on the land are sold to a qualified owner to
4 be occupied by persons and families of low or moderate income
5 as their primary residence, and the land on which the dwelling or
6 unit is situated is leased by the nonprofit corporation to the
7 qualified owner for the convenient occupation and use of that
8 dwelling or unit for a renewable term of 99 years.

9 (B) The dwelling or unit is subject to affordability restrictions.

10 (3) “Limited equity housing cooperative” has the same meaning
11 as that term is defined in Section 817 of the Civil Code.

12 (4) “Persons and families of low or moderate income” has the
13 same meaning as that term is defined in Section 50093 of the
14 Health and Safety Code.

15 (5) “Qualified owner” means either of the following:

16 (A) A limited equity housing cooperative.

17 (B) Persons and families of low or moderate income.

18 (6) “Purchase price” means a price that does not exceed the sale
19 or resale formula that ensures the dwelling or unit has a purchase
20 price that is affordable to persons and families of low or moderate
21 income.

22 (d) This section shall apply to lien dates occurring on and after
23 January 1, 2017.

24 SEC. 2. Section 214.17 is added to the Revenue and Taxation
25 Code, to read:

26 214.17. (a) Property is within the exemption provided by
27 Sections 4 and 5 of Article XIII of the California Constitution if
28 that property is owned and operated by a nonprofit corporation;
29 otherwise qualifying for exemption under Section 214, that has as
30 one of its primary purposes the creation and maintenance of
31 permanently affordable single-family or multifamily residences
32 in which both of the following conditions apply:

33 (1) All residences on the land are intended for ownership by a
34 qualified owner to be occupied by persons and families of low or
35 moderate income as their primary residence, and the land on which
36 the residence is situated is leased by the nonprofit corporation to
37 the qualified owner for the convenient occupation and use of that
38 residence for a renewable term of 99 years.

39 (2) The residence is subject to affordability restrictions.

~~(b) In the case of property not previously designated as open space, the exemption provided by subdivision (a) may not be denied to a property on the basis that the property does not currently include a single-family or multifamily residence, as described in subdivision (a), or a single-family or multifamily residence, as described in subdivision (a), that is in the course of construction.~~

~~(c) The exemption authorized pursuant to this section shall apply to a property for no more than five years from the date any restriction described in subparagraph (E) or (F) of paragraph (1) of subdivision (d) is recorded against the property.~~

~~(d) For purposes of this section, all of the following shall apply:~~

~~(1) "Affordability restrictions" include, but are not limited to, any of the following:~~

~~(A) The residence can only be rented, sold, or resold to persons and families of low or moderate income to be occupied as a principal place of residence.~~

~~(B) The sale or resale price of the residence is determined by a formula that ensures the residence has a purchase price that is affordable to persons and families of low or moderate income.~~

~~(C) The rent collected from the residence does not exceed the maximum rent allowable to be collected from persons and families of low or moderate income.~~

~~(D) There is a purchase option for the residence in favor of the nonprofit organization intended to preserve the residence as affordable to persons and families of low or moderate income.~~

~~(E) Any restriction that ensures the residence is to remain affordable to persons and families of low or moderate income by recorded deed, deed restriction, ground lease, covenant, memorandum, or other recorded instrument.~~

~~(F) Any restriction in a recorded instrument from which one of the following public agencies or officials has made a finding that the restriction serves the public interest to create and preserve the affordability of residential housing for persons and families of low or moderate income:~~

~~(i) The director of the local housing authority or equivalent agency.~~

~~(ii) The county counsel.~~

~~(iii) The director of a county housing department.~~

~~(iv) The city attorney.~~

1 ~~(v) The director of a city housing department.~~

2 ~~(2) “Limited equity housing cooperative” has the same meaning~~
3 ~~as that term is defined in Section 817 of the Civil Code.~~

4 ~~(3) “Persons and families of low or moderate income” has the~~
5 ~~same meaning as that term is defined in Section 50093 of the~~
6 ~~Health and Safety Code.~~

7 ~~(4) “Qualified owner” means either of the following:~~

8 ~~(A) A limited equity housing cooperative.~~

9 ~~(B) Persons and families of low or moderate income.~~

10 ~~(e) This section shall apply to lien dates occurring on and after~~
11 ~~January 1, 2017.~~

12 *SECTION 1. Section 402.1 of the Revenue and Taxation Code*
13 *is amended to read:*

14 402.1. (a) In the assessment of land, the assessor shall consider
15 the effect upon value of any enforceable restrictions to which the
16 use of the land may be subjected. These restrictions shall include,
17 but are not limited to, all of the following:

18 (1) Zoning.

19 (2) Recorded contracts with governmental agencies other than
20 those provided in Sections 422, 422.5, and 422.7.

21 (3) Permit authority of, and permits issued by, governmental
22 agencies exercising land use powers concurrently with local
23 governments, including the California Coastal Commission and
24 regional coastal commissions, the San Francisco Bay Conservation
25 and Development Commission, and the Tahoe Regional Planning
26 Agency.

27 (4) Development controls of a local government in accordance
28 with any local coastal program certified pursuant to Division 20
29 (commencing with Section 30000) of the Public Resources Code.

30 (5) Development controls of a local government in accordance
31 with a local protection program, or any component thereof, certified
32 pursuant to Division 19 (commencing with Section 29000) of the
33 Public Resources Code.

34 (6) Environmental constraints applied to the use of land pursuant
35 to provisions of statutes.

36 (7) Hazardous waste land use restriction pursuant to Section
37 25226 of the Health and Safety Code.

38 (8) (A) A recorded conservation, trail, or scenic easement, as
39 described in Section 815.1 of the Civil Code, that is granted in
40 favor of a public agency, or in favor of a nonprofit corporation

1 organized pursuant to Section 501(c)(3) of the Internal Revenue
2 Code that has as its primary purpose the preservation, protection,
3 or enhancement of land in its natural, scenic, historical, agricultural,
4 forested, or open-space condition or use.

5 (B) A recorded greenway easement, as described in Section
6 816.52 of the Civil Code, that is granted in favor of a public
7 agency, or in favor of a nonprofit corporation organized pursuant
8 to Section 501(c)(3) of the Internal Revenue Code that has as its
9 primary purpose the developing and preserving of greenways.

10 (9) A solar-use easement pursuant to Chapter 6.9 (commencing
11 with Section 51190) of Part 1 of Division 1 of Title 5 of the
12 Government Code.

13 (10) A contract where the following apply:

14 (A) The contract is with a nonprofit corporation organized
15 pursuant to Section 501(c)(3) of the Internal Revenue Code that
16 has received a welfare exemption under Section 214.15 for
17 properties intended to be sold to low-income families who
18 participate in a special no-interest loan program.

19 (B) The contract restricts the use of the land for at least 30 years
20 to owner-occupied housing available at affordable housing cost in
21 accordance with Section 50052.5 of the Health and Safety Code.

22 (C) The contract includes a deed of trust on the property in favor
23 of the nonprofit corporation to ensure compliance with the terms
24 of the program, which has no value unless the owner fails to
25 comply with the covenants and restrictions of the terms of the
26 home sale.

27 (D) The local housing authority or an equivalent agency, or, if
28 none exists, the city attorney or county counsel, has made a finding
29 that the long-term deed restrictions in the contract serve a public
30 purpose.

31 (E) The contract is recorded and provided to the assessor.

32 *(11) A recorded instrument where the following apply:*

33 *(A) The recorded instrument subjects a single-family dwelling*
34 *or unit in a multifamily dwelling, and the land on which the*
35 *dwelling or unit is situated that is required for the convenient*
36 *occupation and use of that dwelling or unit by persons and families*
37 *of low or moderate income, to affordability restrictions.*

38 *(B) One of the following public agencies or officials has made*
39 *a finding that the restriction serves the public interest to create*

1 *and preserve the affordability of residential housing for persons*
2 *and families of low or moderate income:*

3 (i) *The director of the local housing authority or equivalent*
4 *agency.*

5 (ii) *The county counsel.*

6 (iii) *The director of a county housing department.*

7 (iv) *The city attorney.*

8 (v) *The director of a city housing department.*

9 (C) *The recorded instrument is provided to the assessor.*

10 (D) *For purposes of this section, all of the following definitions*
11 *shall apply:*

12 (i) *“Affordability restrictions” include all of the following:*

13 (I) *The dwelling or unit can only be rented, sold, or resold to*
14 *persons and families of low or moderate income to be occupied*
15 *as a principal place of residence.*

16 (II) *The sale or resale price of the dwelling or unit is determined*
17 *by a formula that ensures the dwelling or unit has a purchase price*
18 *that is affordable to persons and families of low or moderate*
19 *income.*

20 (III) *The rent collected from the dwelling or unit, if applicable,*
21 *does not exceed the maximum rent allowable to be collected from*
22 *persons and families of low or moderate income.*

23 (IV) *There is a purchase option for the dwelling or unit in favor*
24 *of a community land trust intended to preserve the dwelling or*
25 *unit as affordable to persons and families of low or moderate*
26 *income.*

27 (V) *The dwelling or unit is to remain affordable to persons and*
28 *families of low or moderate income by recorded deed, deed*
29 *restriction, ground lease, covenant, memorandum, or other*
30 *recorded instrument.*

31 (ii) *“Community land trust” means a nonprofit corporation,*
32 *otherwise qualifying for exemption under Section 214, that satisfies*
33 *both of the following:*

34 (I) *Has as one of its primary purposes the creation and*
35 *maintenance of permanently affordable single-family or multifamily*
36 *residences.*

37 (II) *All residences on the land are sold to a qualified owner to*
38 *be occupied by persons and families of low or moderate income*
39 *as their primary residence, and the land on which the dwelling or*
40 *unit is situated is leased by the nonprofit corporation to the*

1 *qualified owner for the convenient occupation and use of that*
2 *dwelling or unit for a renewable term of 99 years.*

3 (iii) *“Limited equity housing cooperative” has the same meaning*
4 *as that term is defined in Section 817 of the Civil Code.*

5 (iv) *“Persons and families of low or moderate income” has the*
6 *same meaning as that term is defined in Section 50093 of the*
7 *Health and Safety Code.*

8 (v) *“Qualified owner” means either of the following:*

9 (I) *A limited equity housing cooperative.*

10 (II) *Persons and families of low or moderate income.*

11 (b) There is a rebuttable presumption that restrictions will not
12 be removed or substantially modified in the predictable future and
13 that they will substantially equate the value of the land to the value
14 attributable to the legally permissible use or uses.

15 (c) Grounds for rebutting the presumption may include, but are
16 not necessarily limited to, the past history of like use restrictions
17 in the jurisdiction in question and the similarity of sales prices for
18 restricted and unrestricted land. The possible expiration of a
19 restriction at a time certain shall not be conclusive evidence of the
20 future removal or modification of the restriction unless there is no
21 opportunity or likelihood of the continuation or renewal of the
22 restriction, or unless a necessary party to the restriction has
23 indicated an intent to permit its expiration at that time.

24 (d) In assessing land with respect to which the presumption is
25 un rebutted, the assessor shall not consider sales of otherwise
26 comparable land not similarly restricted as to use as indicative of
27 value of land under restriction, unless the restrictions have a
28 demonstrably minimal effect upon value.

29 (e) In assessing land under an enforceable use restriction wherein
30 the presumption of no predictable removal or substantial
31 modification of the restriction has been rebutted, but where the
32 restriction nevertheless retains some future life and has some effect
33 on present value, the assessor may consider, in addition to all other
34 legally permissible information, representative sales of comparable
35 lands that are not under restriction but upon which natural
36 limitations have substantially the same effect as restrictions.

37 (f) For the purposes of this section the following definitions
38 apply:

1 (1) “Comparable lands” are lands that are similar to the land
2 being valued in respect to legally permissible uses and physical
3 attributes.

4 (2) “Representative sales information” is information from sales
5 of a sufficient number of comparable lands to give an accurate
6 indication of the full cash value of the land being valued.

7 (g) It is hereby declared that the purpose and intent of the
8 Legislature in enacting this section is to provide for a method of
9 determining whether a sufficient amount of representative sales
10 information is available for land under use restriction to ensure
11 the accurate assessment of that land. It is also hereby declared that
12 the further purpose and intent of the Legislature in enacting this
13 section and Section 1630 is to avoid an assessment policy which,
14 in the absence of special circumstances, considers uses for land
15 that legally are not available to the owner and not contemplated
16 by government, and that these sections are necessary to implement
17 the public policy of encouraging and maintaining effective land
18 use planning. This statute shall not be construed as requiring the
19 assessment of any land at a value less than as required by Section
20 401 or as prohibiting the use of representative comparable sales
21 information on land under similar restrictions when this information
22 is available.

23 ~~SEC. 3.~~

24 *SEC. 2.* If the Commission on State Mandates determines that
25 this act contains costs mandated by the state, reimbursement to
26 local agencies and school districts for those costs shall be made
27 pursuant to Part 7 (commencing with Section 17500) of Division
28 4 of Title 2 of the Government Code.

29 ~~SEC. 4.~~

30 *SEC. 3.* Notwithstanding Section 2229 of the Revenue and
31 Taxation Code, no appropriation is made by this act and the state
32 shall not reimburse any local agency for any property tax revenues
33 lost by it pursuant to this act.

34 ~~SEC. 5.~~

35 *SEC. 4.* This act provides for a tax levy within the meaning of
36 Article IV of the Constitution and shall go into immediate effect.